

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In the Matter of)
)
 Amendment of the Commission's Rules)
 Regarding Installment Payment Financing for)
 Personal Communications Services (PCS))
 Licensees)

WT Docket No. 97-82 /

JUN 3 2000

To: The Commission

REPLY COMMENTS OF U.S. AIRWAVES, INC.

U.S. AirWaves, Inc. ("U.S. AirWaves"), by its attorneys, hereby submits its Reply Comments regarding the Further Notice of Proposed Rule Making, FCC 00-197, released in the above-captioned proceeding on June 7, 2000 (the "Further Notice"). The various comments^{1/} filed in response to the Further Notice build an impressive record

^{1/} See Comments of Advanced Telecommunications Technology, Inc. ("Advanced Comments"); Comments of AirGate Wireless, LLC ("AirGate Comments"); Comments of Alaska DigiTel, LLC, Poplar PCS, LLC and Eldorado Communications, LLC ("Alaska/Poplar/Eldorado Comments"); Comments of Alpine PCS, Inc. ("Alpine Comments"); Comments of America Connect, Inc. ("America Connect Comments"); Comments of the Association of Communications Enterprises ("ASCENT Comments"); Comments of AT&T Wireless Services, Inc. ("AT&T Comments"); Comments of BellSouth Corporation ("BellSouth Comments"); Comments of Burst Wireless, Inc. ("Burst Comments"); Comments of Carolina PCS I Limited Partnership ("Carolina PCS Comments"); Comments of the Cellular Telecommunications Industry Association ("CTIA Comments"); Comments of Choice Wireless, LC ("Choice Comments"); Comments of Cook Inlet Region, Inc. ("CIRI Comments"); Comments of Dobson Communications Corporation ("Dobson Comments"); Further Comments of Leap Wireless International, Inc. ("Leap Comments"); Comments of the National Telephone Cooperative Association ("NTCA Comments"); Comments of Nextel Communications, Inc. ("Nextel Comments"); Comments of NextWave Personal Communications, Inc. and NextWave Power Partners, Inc. ("NextWave Comments"); Comments of Northcoast Communications, LLC ("Comments of Northcoast"); Comments of the National Telephone Cooperative Association ("NTCA Comments"); Comments of the Office of Advocacy, U.S. Small Business Administration ("SBA Comments"); Comments of OPM Auction Co. ("OPM Comments"); Comments of the Personal Communications Industry Association ("PCIA Comments"); Comments of Polycell Communications, Inc. ("Polycell Comments"); Comments of Powertel, Inc. ("Powertel Comments"); Comments of Roseville PCS, Inc. ("Roseville Comments"); Comments of the Rural

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demonstrating that the Commission should adopt important modifications to its proposed rules to speed the delivery of new and innovative services to the public, while simultaneously meeting the objectives that Congress set forth in Section 309(j) of the Communications Act, as amended (“Section 309(j)”).

I. AT LEAST 20 MHZ OF SPECTRUM MUST BE SET-ASIDE TO ENSURE THE SUCCESS OF SMALL BUSINESS ENTRANTS.

The comments recognize that setting aside just 10 MHz of spectrum for entrepreneurs is insufficient to ensure the success of small businesses.^{2/} The wireless market is on the verge of a major shift toward wireless data services, including broadband Internet services. Only true Third Generation (“3G”) broadband systems will have the capacity to support such services. Among those parties considering the issue, there appears to be unanimity that 3G wireless services cannot be deployed with just 10 MHz of spectrum.^{3/}

^{1/}(...continued)

Telecommunications Group and the Organization for the Promotion and Advancement of Small Telecommunications Companies (“RTG/OPASTCO Comments”); Comments of SBC Communications, Inc. (“SBC Comments”); Comments of STPCS Joint Venture, LLC (“STPCS Comments”); Comments of TeleCorp PCS, Inc. and Tritel Communications, Inc. (“TeleCorp/Tritel Comments”); Comments of Twenty First Wireless, Inc. (“TFW Comments”); Comments of U.S. West Wireless, LLC (“USWW Comments”); Comments of Verizon Wireless (“Verizon Comments”); Comments of VoiceStream Wireless Corporation (“VoiceStream Comments”); Comments of Wireless Solutions (“Wireless Solutions Comments”); Submission of the Rural Cellular Association (“RCA Comments”).

^{2/} See, e.g., Advanced Comments at 3-4; Alpine Comments at 6-10; America Connect Comments at 3-4; TFW Comments at 11; Leap Comments at 14; NTCA Comments at 9; OPM Comments at 6-9; PCIA Comments at 17-20; RTG/OPASTCO Comments at 4-5; SBA Comments at 6; U.S. AirWaves Comments at 5-6. The NTCA observes that a small business with access to just 10 MHz of spectrum may have considerable difficulty competing against large, entrenched incumbents that have access to much larger amounts of spectrum. NTCA Comments at 8. U.S. AirWaves fully concurs with this viewpoint.

^{3/} See *id.* Note that some of the comments reach the more general conclusion that combined voice and data services cannot be provided with just 10 MHz of spectrum.

Indeed, many of the comments recognize that at least 20 MHz must be set-aside to ensure the success of small business entrants.^{4/}

Even SBC -- a large, entrenched incumbent whose interests are diametrically opposed to those of small businesses -- admits that 10 MHz of spectrum is not sufficient to establish a viable PCS business.^{5/} Furthermore, Nextel's own cost analysis -- assuming arguendo its accuracy -- predicts a negative Net Present Value for each of several different deployment scenarios involving the use of just 10 MHz of spectrum.^{6/} Because 20 MHz of spectrum would support 3G services, deployment scenarios involving 20 MHz of spectrum would necessarily yield much more favorable results, as demonstrated by the significant number of small businesses that have gone on record in this proceeding stating that they can establish viable PCS businesses if they have access to at least 20 MHz of spectrum.^{7/}

While BellSouth and AirGate each attempt to demonstrate that 10 MHz is sufficient to establish a viable PCS business,^{8/} their arguments are critically flawed. Both BellSouth and AirGate focus their attention on the amount of spectrum that is required to establish a viable PCS business today.^{9/} The correct inquiry is to ask how much spectrum

^{4/} See, e.g., Leap Comments at 14; NTCA Comments at 9-10; OPM Comments at 2, 9; RTG/OPASTCO Comments at 4-5; SBA Comments at 5-6; U.S. AirWaves Comments at 5-6.

^{5/} SBC Comments at 11 ("in . . . large markets . . . a single 10 MHz license is almost certainly not enough to support a viable voice and data business"). SBC states that "30 MHz of PCS spectrum is needed to offer a full complement of both voice and data wireless services." Id. at 9.

^{6/} Nextel Comments at 8-11, Exhibit 1 at 2-3.

^{7/} See supra note 4.

^{8/} See AirGate Comments at 4; BellSouth Comments at 7.

^{9/} Furthermore, in referencing a 1993 Commission decision that partitioned certain PCS spectrum into 10 MHz blocks, BellSouth premised its argument on market conditions that existed seven years ago. BellSouth Comments at 7.

will be required several years from now, when licensees actually begin providing services. Because the wireless market is on the verge of a major shift toward wireless data services that require the kinds of channel capacities envisioned for 3G systems, future new entrants will require at least 20 MHz of spectrum.^{10/}

By adopting auction rules that set-aside at least 20 MHz of spectrum for entrepreneurs, the Commission will ensure the success of the small businesses sought to be fostered by Section 309(j).

II. BTA TIERING IS ARBITRARY, IRRATIONAL AND WOULD PREVENT ENTREPRENEURS FROM ACQUIRING 20 MHZ OF SPECTRUM IN LARGE MARKETS.

The Commission should abandon its BTA tiering proposal. Both large and small businesses alike have concluded that the population cut-off approach is “arbitrary.”^{11/} The Further Notice did not articulate any intelligible standard that could be used to validate one population cut-off as against all others, and nothing in any of the comments fills that void.

The tiering proposal also should be abandoned because tiering itself is irrational. Numerous parties accurately observe that small businesses are capable of competing in even the largest of markets and, indeed, the business case for deploying services in larger markets may be even stronger than for small markets.^{12/} For example, in many instances, the population densities of larger urban areas would allow equipment to be

^{10/} See supra note 4.

^{11/} See, e.g., BellSouth Comments at 1; Northcoast Comments, Summary; U.S. West Comments at 5. Cf. Verizon Comments at 11 (describing BTA tiering as overly complicated and unjustified).

^{12/} See, e.g., Dobson Comments at 7 (stating that “entities qualifying for restricted eligibility licenses can successfully operate in even the largest markets”). The ability of small businesses to compete in large markets would depend, however, on whether they have access to 20 MHz of spectrum. See supra note 4.

deployed more efficiently and to generate much larger revenue streams as compared with rural or small urban areas.^{13/}

Finally, as noted by many parties, the Commission's tiering proposal would virtually guarantee that large, entrenched incumbents would claim two out of three C block licenses in Tier 1 areas.^{14/} Because a new entrant requires at least 20 MHz of spectrum to successfully compete in the emerging market for 3G services, such a result would substantially reduce the opportunities available to small businesses by artificially relegating them to the "backwaters" of small, niche markets. Thus, in light of the objectives set forth by Congress in Section 309(j), including the promotion of meaningful economic opportunities for small businesses, the Commission should abandon its tiering proposal.

III. THE COMMISSION'S OWN DATA UNEQUIVOCALLY SHOWS THAT "OPEN" BIDDING WOULD VERY SUBSTANTIALY REDUCE ECONOMIC OPPORTUNITIES FOR ENTREPRENEURS.

U.S. AirWaves reaffirms its strong opposition to the Commission's proposals to permit "open" bidding on many or most of the C and F block licenses, because the effect of such proposals would be to substantially reduce economic opportunities for small businesses.^{15/} Indeed, numerous parties urge the Commission to retain its existing eligibility rules for C and F block auctions.^{16/}

^{13/} For example, ASCENT points out that "[m]any smaller cities are less densely developed and therefore may require more equipment to serve the same number of customers than cities with larger populations." ASCENT Comments at 7.

^{14/} See NTCA Comments at 8; U.S. AirWaves Comments at 7-8.

^{15/} See U.S. AirWaves Comments at 5.

^{16/} See, e.g., Advanced Comments at 1-4; Alaska/Poplar/Eldorado Comments at 1; Alpine Comments at 2; Northcoast Comments at 2-3; NTCA Comments at 2-7; Powertel Comments at 1; SBA Comments at 1-5; U.S. AirWaves Comments at 5; Wireless Solutions Comments at 2.

The debate over whether the Commission should permit “open” bidding on some or all of the C and F block licenses mostly is focused on interpreting the Commission’s published data summarizing the results of prior auctions.^{17/} On the one hand, proponents of “open” bidding point out that in prior “open” auctions (where significant bidding credits were available) small businesses were high bidders for anywhere from 14.3 to 91 percent of the available licenses.^{18/} From this they conclude that “open” auctions (where significant bidding credits are available) create meaningful economic opportunities for small businesses, thereby fulfilling the requirements of Section 309(j). U.S. AirWaves urges the Commission to recognize that auction procedures that could result in just 14.3 percent of the high bidders being small businesses cannot be relied upon to provide meaningful opportunities for small businesses, especially for C and F block auctions where the relevant spectrum is deeply coveted by large, entrenched incumbents.

On the other hand, opponents of “open” bidding look at this same data and recognize that “open” bidding in the upcoming C and F block auctions could yield anywhere from 85.7 to 9 percent fewer small business high bidders as compared with “closed” bidding.^{19/} Put another way, the Commission must consider not only whether “open” bidding will afford meaningful opportunities to small businesses as required by Section 309(j), but also whether “closed” bidding would more fully promote such opportunities, consistent with other statutory goals.

U.S. AirWaves and other participants in this proceeding have demonstrated that, with “closed” bidding on at least 20 MHz of spectrum in all markets, small businesses

^{17/} See Further Notice at ¶40.

^{18/} See, e.g., BellSouth Comments at 12; Nextel Comments at 14; Verizon Comments at 9. See also Further Notice at ¶40.

^{19/} See, e.g., U.S. AirWaves Comments at 7. See also Further Notice at ¶40.

will be able to establish viable, competitive 3G systems, consistent with Congress' intent. To substantially reduce the opportunities available to small businesses -- by forcing small businesses to bid against the largest corporations in the world for some or all of the C and F block licenses -- would be fundamentally unfair and would substantially undermine the important goals set forth by Congress in Section 309(j).^{20/}

IV. BIDDING CREDITS MUST BE SUBSTANTIALLY INCREASED IF "OPEN" BIDDING IS PERMITTED, TO ENSURE THAT ENTREPRENEURS WILL BE ABLE TO COMPETE FOR SPECTRUM.

The comments overwhelmingly support retaining bidding credits for small and very small businesses competing in "open" auctions.^{21/} Indeed, the predominant view is that if the Commission does adopt "open" bidding procedures, it should substantially increase the available bidding credits.^{22/}

The Commission's published data summarizing prior auction results demonstrates that an "open" auction -- even with bidding credits as high as 35 percent for very small businesses -- could nonetheless result in 60 percent fewer small business licensees

^{20/} See, e.g., OPM Comments at 5-6, 8; RCA Comments at 1; U.S. AirWaves Comments at 3, 7. See also, Further Notice at ¶19 (recognizing that many entrepreneurs contend that fairness requires the Commission to continue to maintain the present eligibility requirements).

^{21/} See Advanced Comments at 5; AirGate Comments at 7; Alaska/Poplar/Eldorado Comments at 2; Alpine Comments at 16; ASCENT Comments at 4; BellSouth Comments at 12; Burst Comments at 5-6; Carolina PCS Comments at 5-6; CTIA Comments at 4; Dobson Comments at 16; TFW Comments at 6; Leap Comments at 19; OPM Comments at 12; RTG/OPASTCO Comments at 6; SBA Comments at 5; TeleCorp/Tritel Comments at 15-16; U.S. AirWaves Comments at 6-7; VoiceStream Comments at 12; Wireless Solutions Comments at 3.

^{22/} See Advanced Comments at 5; AirGate Comments at 7; Alaska/Poplar/Eldorado Comments at 2; Alpine Comments at 16; ASCENT Comments at 4; Burst Comments at 5-6; Carolina PCS Comments at 5-6; TFW Comments at 6; Leap Comments at 19; OPM Comments at 12; RTG/OPASTCO Comments at 6; SBA Comments at 5; TeleCorp/Tritel Comments at 15-16; U.S. AirWaves Comments at 6-7; Wireless Solutions Comments at 3.

as compared with “closed” auctions.^{23/} In other words, permitting “open” auctions for C and F block licenses invariably will foreclose meaningful economic opportunities for a very substantial number of small businesses.

There is simply no way that such a result can be squared with Section 309(j). Assuming arguendo that any of the licenses available in Auction No. 35 are subject to an “open” auction, a bidding credit of no less than 45 percent must be made available to participating very small businesses.^{24/}

V. THE CMRS SPECTRUM CAP SHOULD BE RETAINED TO PREVENT EXCESSIVE CONCENTRATION OF OWNERSHIP AND TO PROMOTE DEVELOPMENT OF COMPETITIVE MARKETS.

The overwhelming majority of the comments support the Commission’s proposal to retain the existing CMRS spectrum cap.^{25/} Not surprisingly, the principal parties opposed are the large, entrenched incumbents -- the very entities that would engage in a “gold rush” to buy-out small, independent licensees if the spectrum cap were eliminated.^{26/} Such a result would fundamentally undermine the development of competitive markets for

^{23/} See Further Notice at ¶40 (summarizing 39 GHz auction results). U.S. AirWaves made this same basic point in its Comments, but inadvertently stated that the Commission’s data shows that this result was obtained where bidding credits for very small businesses were as high as “45 percent.” U.S. AirWaves Comments at 7.

^{24/} Indeed, several parties urge the Commission to adopt bidding credits substantially exceeding 45 percent. See Burst Comments at 5-6 (calling for a third category of eligibility that would be allotted a bidding credit of at least 50 percent); TFW Comments at 6 (calling for bidding credits of 60 percent for very small businesses). Cf. RTG/OPASTCO Comments at 6 (stating that even a 45 percent bidding credit would be insufficient).

^{25/} See Advanced Comments at 6; AirGate Comments at 9-10; Alpine Comments at 17; ASCENT Comments at 3-4; Burst Comments at 7-8; Carolina PCS Comments at 9; Leap Comments at 20-21; Northcoast Comments at 12-13; OPM Comments at 15; PCIA Comments at 28-30; Powertel Comments at 7; U.S. AirWaves Comments at 9-10; USWW Comments at 6-7; Wireless Solutions Comments at 4.

^{26/} See AT&T Comments at 4-6; BellSouth Comments at 14-15; Verizon Comments at 20-24. See also CTIA Comments at 5-6; VoiceStream Comments at 13.

wireless services. These large, entrenched incumbents have not and cannot provide the Commission with any reasonable assurances that such a “gold rush” would not occur.

The Commission recognized these and other important considerations in its recent, exhaustive review of the spectrum cap which concluded that an overall spectrum cap should be retained.^{27/} Keeping in mind that large, entrenched incumbents generally have called for the wholesale elimination of the spectrum cap, as opposed to a mere relaxation of that restriction,^{28/} the Commission is left with no reasonable alternative to the status quo unless it entirely repudiates the logic underlying its recent decision. The record in this proceeding fails to establish any basis for such a radical change of policy.

VI. LICENSE-BY-LICENSE BIDDING PROCEDURES SHOULD BE RETAINED TO ENSURE ECONOMIC OPPORTUNITIES FOR SMALL BUSINESSES; LICENSE GROUPING IS NOT SUPPORTED BY THE COMMENTS.

Many of the comments express strong support for retaining license-by-license bidding procedures and urge the Commission to reject license grouping.^{29/} License grouping uniquely favors larger businesses at the expense of small businesses because of the vast financial resources that must be marshaled in order to bid on entire groups of licenses. Coupled with “open” bidding, license grouping likely would result in a “clean sweep” for a small cadre of large, entrenched incumbents -- a result that is entirely inconsistent with the objectives set forth by Congress in Section 309(j). Indeed, U.S. AirWaves is not aware of any comments that support license grouping, and thus there is little, if any, support in the record for adopting such procedures.

^{27/} See “1998 Biennial Regulatory Review -- Spectrum Aggregation Limits for Wireless Telecommunications Carriers,” Report and Order, WT Docket No. 98-205, FCC 99-244 (released September 22, 1999).

^{28/} See, e.g., AT&T Comments at 4-6; BellSouth Comments at 14-15.

^{29/} See Carolina PCS Comments at 4; CTIA Comments at 3; OPM Comments at 9-10; USWW Comments at 6.

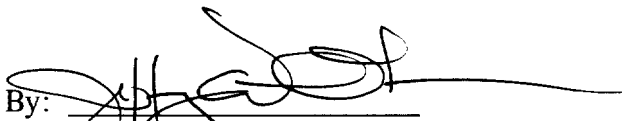
CONCLUSION

Consistent with its Comments and the instant Reply Comments, U.S.

AirWaves strongly urges the Commission to modify the proposed C and F block auction rules to more fully promote the objectives set forth by Congress in Section 309(j), including the development of competitive markets for wireless services and the promotion of meaningful economic opportunities for small businesses.

Respectfully submitted,

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I hereby certify that a copy of the foregoing Reply Comments of U.S. AirWaves was served this 30th day of June, 2000, by hand or U.S. Mail, postage prepaid, on the following:

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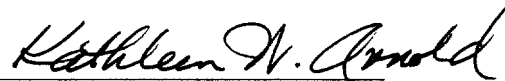
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